Before the Administrative Hearing Commission State of Missouri



KANSAS CITY MASTER COMPANIES, INC.,)
Petitioner,)
vs.) No. 13-1377 RS
DIRECTOR OF REVENUE,)
Respondent.)

ORDER

We grant the Director of Revenue's motion for partial summary decision because Kansas City Master Companies, Inc. ("KCMC") did not timely file its use tax refund request for the 2009 tax year.

Procedure

KCMC filed its complaint on August 1, 2013 seeking refunds of use tax for the 2009 and 2010 tax years. The Director filed an answer and a motion for partial summary decision on August 28, 2013. We gave KCMC until September 12, 2013, to respond to the motion. KCMC did not file a response. On October 11, 2013, KCMC filed a motion for extension of time to respond to the motion. By order dated October 15, 2013, we granted the extension and gave KCMC until November 14, 2013, to file its response. KCMC again did not file a response.

We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.¹

Findings of Fact

- 1. KCMC filed a use tax return with the Director on or before August 15, 2010, for the 2009 tax year. KCMC paid use tax in the amount of \$15,333.42 on that same date.
- 2. KCMC filed an amended use tax return and a request for a use tax refund for the 2009 tax year with the Director on May 2, 2013.
 - 3. The Director denied KCMC's request for a refund on June 3, 2013.

Conclusions of Law

We have jurisdiction over the Director's final decisions. § 621.050.² Our duty is not merely to review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision.³

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.⁴ "When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit."⁵

Section 144.190.2 governs refunds and states, in relevant part, that "no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from the date of overpayment." Section 144.696 explicitly makes § 144.190 applicable to use tax refunds.

¹ 1 CSR 15-3.440(6)(A).

² All statutory references are to the 2000 version of the Missouri Revised Statutes.

³J.C. Nichols Co. v. Director of Revenue, 796 S.W.2d 16, 20-21 (Mo. 1990).

⁴Community Fed. Sav. & Loan Ass'n v. Director of Revenue, 796 S.W.2d 883, 885 (Mo. 1990).

⁵State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n, 517 S.W.2d 133, 137 (Mo. 1974).

Thus, a refund claim must be filed within three years of the overpayment. KCMC made

the claimed overpayment on April 15, 2010. It filed its request for a refund on May 2, 2013.

May 2, 2013, is more than three years after April 15, 2010. Therefore, KCMC filed its request

for a refund outside the limitations period. KCMC cannot receive a refund for overpayment of

use tax during the 2009 tax year.

Summary

We grant the Director's motion for partial summary judgment. We lack authority to rule

on KCMC's request for a use tax refund for the 2009 tax year. The question of KCMC's

entitlement to a use tax refund for the 2010 tax year is still pending before us.

SO ORDERED on November 19, 2013.

\s\ Karen A. Winn_

KAREN A. WINN

Commissioner

3